HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

HON'BLE SRI JUSTICE D APPARAO

Monday, the 17th day of April, 2006

WRIT APPEAL No.1334 of 2000

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Between:

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Andhra Bank rep. By its Chairman &

Managing Director, Hyderabad .. Appellant

And

1. Andhra Bank Officers' Union, Himayatnagar,

   Hyderabad and two others. .. Respondents

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JUDGMENT (Per Hon'ble Sri Justice D.Apparao):

This Writ Appeal is at the instance of R-3-Andhra Bank against the order of the learned Single Judge dated
17-08-1999 in W.P.No.15287 of 1990, allowing the writ petition quashing the impugned Circular dated 18-04-1990 withdrawing the conveyance expenses 'from office to residence and back' on the ground that it was not 'official journey'.

2. Few facts which are necessary for disposal of this appeal are as follows:-

Andhra Bank Officers Union questioned the Circular issued by the Government of India and that of consequential Circular withdrawing the facility of conveyance expenses for the journey undertaken by the officers between the office and back to residence. Andhra Bank in consultation with the Reserve Bank of India and with prior approval of the Central Government has made regulations known as “The Andhra Bank Officers Service Regulations, 1982” (“Regulations” for short) in exercise of the powers conferred by Section 19 read with Section 12 (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (“Act” for short). It come into effect from 01-01-1983. Regulation No.26 permits the Board of Directors to frame a scheme for providing conveyance to the Executives/Officers of the Banks and accordingly a scheme was formulated vide Circular No.139, dated 20-04-1983. Para 2(b) of the said scheme postulates ‘travel from residence to office and back to residence is to be considered as ‘travel for the office work’.

3. Indian Banks’ Association-R2 herein by its Circular dated 31-01-1983 requested the individual Public Sector Banks to decide the matter. R-3, the Board of Directors of appellant, in turn, in its meeting on 20-02-1985 approved the scheme for reimbursement of conveyance expenses incurred by the officers while performing their official duties.

4. While so, R-1, the Government of India, by the impugned guidelines dated 18-04-1990, directed all the public sector banks not to treat the journey undertaken by the officers ‘from the office to residence and back’ as ‘official journey’ and no reimbursement for such journies be made.
R-2, in-turn, issued Circular dated 21-08-1990 conveying the said fact with a direction that it should be strictly complied.

5. Thereupon, the Andhra Bank Officers’ Union, filed writ petition, challenging these circulars on the ground that they were contrary to law and that the Government of India had no power or jurisdiction under Section 8 of Act 40 of the Act. There was no consultation with the Reserve Bank of India as was required under Section 5 of the Act.

6. On the contrary, the appellant contended that the scheme for reimbursement of the conveyance expenses was no doubt formulated by the Board of Directors. However, the Government of India has power to issue such

guidelines and that they were bound to carry out instructions issued by the government of India. The Board of Directors at its meeting held on 28-03-1990, approved a scheme for reimbursement of conveyance expenses incurred by the officers which were based on Indian Banks' Association guidelines and however, the similar schemes existing some other nationalized banks. The said scheme was given effect from 28-03-1990. By way of Circular dated 19-05-1990, all the officers are informed about the Board's decision revising the rates of reimbursement of conveyance expenses to the officers.

7. The Government of India vide letter dated 18-04-1990 communicated that the scheme of reimbursement should not become a source of profit to the officers and further directed that the journies from the office to the residence and back could not be treated as 'official journey' and no reimbursement for the alleged journey to be made. Since the Government of India directed all the banks to implement the same, the Indian Bank Association by its letter dated 21-08-1990 informed that for the sake of uniformity, the Government instructions should be implemented. Since the scheme was formulated by the Board, a reference was made to the Board for taking a decision. Subsequently by communication dated 14-09-1990 the banks were advised to keep the implementation of Government of India guidelines in abeyance. On that the officers continue to draw conveyance as was being done previously. Subsequently, by communication dated 25-01-1991, they were informed that there was no change in the position and the matter was still under consideration of the Government. The officers' association had accepted for the reduction in quantum of petrol in their negotiations at all India level due to the adverse effects of gulf war. The Government of India communication dated 25-04-1990 contemplates certain modifications to the existing scheme which is kept in abeyance. Therefore, no case has been made out by the writ petitioners for quashing the circulars.

8. The learned single Judge considered the questions as to whether the Government of India has any such overriding power to issue guidelines to the Bank, which framed its own scheme, and whether Government of India and Indian Banks' Association could restrain the Bank from formulating the scheme or direct the banks to implement the scheme in a manner, which Government thought it to be appropriate. The learned Judge, observed that the impugned

guidelines issued are unsustainable as they have been issued without any traceable power vesting in R-1. The writ petition was allowed. The impugned circulars were quashed.

9. Aggrieved by the said order, the appellant, Andhra Bank, preferred this appeal contending that the learned single Judge was erred in not appreciating that the guidelines issued by the Government in letter dated 18-04-1990 and the consequential circular dated 21-08-1990 by the Indian Bank Association are in accordance with the existing regulations in force and they have been issued in terms of the powers conferred under Section 8 of the Act. The appellant has no option except to implement the instructions of Government of India as there are fully owned by it. The Government of India have the powers to issue such guidelines. Since the officers have misused the reimbursement claims, the Government was forced to issue such circular. Government was only reminding the Bank about the aberrations and deviations and was not making regulation; Issuing guidelines cannot be constrained as making regulations and as such concurrence of Reserve Bank of India does not arise.

10. Admittedly, as long back as 31-01-1983, Indian Banks' Association issued circular regarding reimbursement of conveyance expenses informing all the Chief Executive Officers of fourteen National Banks that the 'personnel committee' of the Indian Banks' Association evolved a scheme which was placed for consideration of managing committee in its meeting held on 06-01-1983. The Committee decided that though the scheme evolved was aimed at standardization and uniformity, however, some of the banks in the pubic sector have their own views and left the matter to the individual public sector bank to decide. Along with it a model scheme was circulated.

11. Accordingly, the appellant-Andhra Bank has formulated a scheme for payment of allowance including allowance for conveyance as per regulation No.26. The appellant-Bank in the Board Meeting on 07-03-1985 approved the scheme for reimbursement of the conveyance expenses and clarified that travel 'from residence to office and back' was 'travel for office work'. The Board of Directors approved the above scheme on 30-03-1990. This was also approved in the meeting held between the management representatives and the union representatives. In other words the grant of conveyance expenses covered by regulation was also agreed upon by the writ petitioner-union and the

appellant-Bank.

12. While so, the Government of India issued a circular dated 18/25-04-1990 observing that the banks were not exercising control on the reimbursement facility of conveyance expenses and that they should strictly follow the scheme circulated by Indian Bank Association on 31-07-1990 and that to and fro journey between office and residence should not be treated as 'official journey' and no reimbursement for such journies be made.

13. Andhra Bank Officers' Union-writ petitioner took a strong objection for such a unilateral withdrawal of conveyance facility on the ground that the Government of India did not consult the Governor of Reserve Bank as required under Section 8 of the Act.

14. The learned counsel for the appellant contended that the instructions of Government of India are in accordance with the provisions of Section 8 of the Act. Since the powers are inherent as the banks are fully owned by Government of India, circulars issued by the Government are binding on the banks and there was no discretion of powers are vested to the bank.

15. The impugned circular dated 18/25-04-1990 is as follows:

> " I am directed to invite a reference to letter No.ED:OSR:3 dated 31-01-1983 issued by the IBA enclosing a copy of the scheme for re-imbursement of conveyance expenses and to say that the scheme inter-alia laid emhphases is that the reimbursement on consolidated basis should be subject to the specific condition that the claims within the limits represented actual expenses and the scheme should not become a source of profit. The intention was that the practice of actual expenses should not degenerate into an automatic payment of a fixed amount on a certificate basis.
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> It has been observed that the banks are neither exercising any control on the facility of reimbursement of conveyance expenses nor this facility is being made available in the spirit in which it was granted. On the contrary, the facility has been extended to all the officers, irrespective of the fact whether they are required or actually stir out of their offices for official purposes or not. Government feel concerned at the reported misuse of the scheme and consider it necessary that the conveyance expenses are not reimbursement by way of conveyance allowance but there are reimbursed to set off the actual expenditure incurred by the officials on official visits only.

It is, therefore, desired that while the banks may strictly follow the scheme circulated by IBA on 31-01-1983, they should identity the officers whose job involves continuous touring and the scheme for reimbursement on certificate basis should be made applicable to only such officers. Since the pay-scales of officers have been revised after 1983, the minimum basic pay of Rs.1200/- specified in the IBA guidelines be raised to Rs.3060/-. The officers claiming reimbursement should also furnish the particulars of journeys undertaken by them and the expenses incurred or approximate distance covered on each journey. The claims from Junior and Middle Management Grade Officers not covered under these guidelines may be settled on the strength of a certificate from the officer giving particulars of journeys undertaken and expenses incurred on each such journey. The amount to be reimbursed either on account of hired vehicles or for petrol expenses for personal vehicles should be related to the journey performed in connection with official duties and she would be within the limits fixed by IBA.

The to and fro journeys between office and residence should not be treated as official journeys and no reimbursement for such journeys be made. The claim duly countersigned by an officer at least one step higher than the officer claiming the reimbursement for the entire month should be submitted only once. However, the officers in Scale IV and above may not get their vouchers countersigned.

For the sake of uniformity we are enclosing a proforma indicating the details of the vouchers and certificates which may be obtained from the officers claiming reimbursemnt of conveyance charges.

Kindly acknowledge the receipt of the letter."

16. The learned standing counsel for banks submits that the impugned guidelines issued by the Government of India under Andhra Bank (Officers) Service Regulations, 1982. The power to its extent is traceable under Section 8 of the Act. The Andhra Bank has itself power to issue the impugned circular. The Government of India after consulting Indian Banks' Association, a responsible body, which comprising the managements of all the National Banks and this measure was found to be absolutely necessary in the public interest.

17. The learned counsel for the Central Government submits that the impugned guidelines issued by the Government of India is aimed at uniformity and elimination of false claims. In the absence of guidelines, there is every

possibility of officers claiming the false claims.

18. The learned counsel for the successful writ petitioner contends that the Government of India has no power to issue the impugned guidelines. The Andhra Bank Service Regulations, 1982, ('Regulations' for short) made by the bank in exercise of powers conferred by Section 19 read with sub-section 2 of Section 12 of the Act. They confer power to frame scheme in regard to conveyance. The impugned circular issued by the Central Government is vitiated due to non-consultation with the Governor of Reserve Bank of India. There was a settlement between the bank and the union and by it, the bank agreed to reimbursement scheme.

19. In order to appreciate the said contention, it is useful to refer Section 8 of the Act, which reads as follows:

> **"Section 8. Corresponding new banks to be guided by the directions of the Central government:-** Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give."

20. Section 8 of the Act lays down that the Bank in the discharge of functions shall be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of Reserve Bank of India.

21. A perusal of the impugned guidelines makes it clear that there was no prior consultation with the Governor of the Reserve Bank of India. The said consultation was only with the Indian Banks' Association. Had such a consultation been there, the bank is bound by the directions. From this it is beyond doubt that the power for issuing the impugned guidelines cannot be traced to Section 8 of the Act.

22. The learned counsel for the appellant could not invite any other provision in the Act empowering the Government of India to issue the impugned guidelines. We need not state when exercise of power is regulated by a legislative enactment and by subordinate legislation emanating from such

enactment, the contention that *de hors* the enactment and the relevant subordinate or deligated legislation powers can be exercised by a statutory authority merits acceptance. Therefore, we hold that the Government of India has no power unilaterally to issue the impugned guidelines.

23. In fact, the very appellant-bank in its counter filed in the writ petition admitted that "the terms and conditions of service of the officer employees are governed by the Andhra Bank Officers' Service Regulations (ABOSR). These regulations have a statutory force, since they are formulated in consultation with the Reserve Bank of India. The Board of Directors formulated a scheme of reimbursement of conveyance expenses by its meeting held on 28-03-1990. It is mentioned in the said circular that this revision is based on the IBA guidelines and similar schemes existing in some other Nationalised Banks. The scheme was given effect from
28-03-1990 (Circular No.606, dated 30-03-1990). By way of circular dated 19-05-1990, all the officers are informed of the Board's decision dated 28-04-1990 revising the rates of reimbursement of conveyance expenses to the officers, whose basic pay is Rs.3060/- in JMGS-I. Under Scheme B i.e., for the purpose of reimbursement of cost of petrol." It is also mentioned that "the Government of India vide their letter dated 18/25-04-1990 communicated that the scheme of reimbursement of conveyance expenses should not become a source of profit to the officers. It is further stated that under the scheme the reimbursement on consolidated basis should be subject to the specified condition that the claims within the limits represented actual expenses. The Government further clarified that to and from journeys between officers residence should not be treated as official journey and no reimbursement for such journeys be made. The Government directed all the banks to implement and enforce the scheme in its true spirit by calling for the complete details of the journey undertaken, while claiming reimbursement. The IBA vide its letter dated 21-08-1990 addressed to Chief Executives of all public sector banks informed that for the sake of uniformity the Government instructions should be implemented w.e.f.
01-09-1990. Since the scheme for reimbursement of conveyance expenses was formulated by the Board, a reference was made to the board for taking a decision. Subsequently, a communication dated 14-09-1990 was received from the IBA, advising the banks to keep the implementation of Government of India guidelines in abeyance. This was a result of certain negotiations that were

going on between the IBA and the officers unions at the apex level. Accordingly, the officers continue to draw conveyance as was being done previously. We have received one more communication bearing No.220 dated 25-01-1991 wherein they have informed that there is no change in the position and that the mater is still receiving government's consideration."

24. From this, it is clear that to and fro journey from office to house was treated as 'on official duty'. This is specifically governed by the scheme. Therefore, the Government has no power to modify any of the regulations unilaterally without consulting Reserve Bank of India or issue guidelines contrary to the Andhra Bank Service Regulations formulated by the Board.

25. The appellant-bank pleads that it has no choice or discretion to the Board of Directors, the circular having incorporated the guidelines advising its banks to strictly implement the above guidelines. The bank felt that they were bound to implement the guidelines of Government of India issued in the form of guidelines. It is not as if the Board of Directors in not powerless to take decision with regard to dispense with the facility enjoyed by the officers. The impugned circular shows that the Board of Directors have not exercised the powers on their own by independently considering the said question. In fact, there was already a regulation operating the question in dispute.

26. In view of the fact that the Central Government without any authority, contrary to the Section 8 of the Act issued the circular, it is liable to be quashed. The order of the learned Single Judge cannot be assailed on any score.

27. The writ appeal is dismissed. However, in the circumstances, no costs.

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(B.PRAKASH RAO, J)

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April , 2006 (D.APPARAO,J) KVR